

Tara Herivel, LLC  
OSB #070418  
811 SW Naito Parkway, Suite 420  
Portland, Oregon 97204  
Ph: (503) 893-5525  
Tara@heriveldefense.com

**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON**

**UNITED STATES OF AMERICA,**

**No. 3:20-cr-00203-JO**

**Plaintiff,**

**DEFENDANT'S SENTENCING  
MEMORANDUM**

**v.**

**ANDREW STEVEN FAULKNER,**

**Hearing: June 9, 2021 at 10:00 AM**

**Defendant.**

**Honorable Robert E. Jones**

Defendant Andrew Faulkner hereby submits the following sentencing memorandum for the Court's consideration through his attorney Tara Herivel for his sentencing on June 9, 2021.

**Introduction**

***1. Current Charges***

**Case No. 3:20-cr-00203-JO**

Andrew Steven Faulkner was charged by Information on or about July 6, 2020 with one count of Assault on a Federal Officer per 18 U.S.C. § 111(a)(1), a Class A Misdemeanor.

On January 13, 2021, Mr. Faulkner pled guilty to the following conduct:

Count 1: On July 4-5, 2020, I was present outside the Mark O. Hatfield Courthouse in Portland, Oregon during protests, at which time law enforcement were present. One of the responding law enforcement officers was an uniformed Federal Protective Services Officer carrying out his official duties at the time. At approximately 3:00 a.m. on July 5, 2020, I shined a high-powered green laser, which struck the arm and eyes of the officer.

### **Sentencing Procedure Overview**

In imposing a sentence, “the overarching statutory charge for a district court is to “impose a sentence sufficient, but not greater than necessary” to serve the statutory purposes of sentencing as set forth in 18 U.S.C. § 3553(a). *United States v. Carty*, 520 F3d 984, 991 (9<sup>th</sup> Cir. 2008). The Court begins its deliberative process by first determining the applicable guideline range under the U.S. Sentencing Guidelines. *Id.* The Guidelines are “the ‘starting point and the initial benchmark,’” *Id.*, citing *Kimbrough v. United States*, 552 U.S. 85 (2007), quoting *Gall v. United States*, 552 US 38 (2007).

Next, the Court considers the factors listed in Section 3553(a) to determine whether there is support for the sentence suggested by the parties. *Carty*, 520 F3d at 991. These factors include the nature and circumstances of the offense and the history and characteristics of the defendant; the need for the sentence imposed to reflect the purposes of sentencing including respect for the law, deterrence, protection of the public, and providing defendant with needed care and training in the most effective manner; the kinds of sentences available and the sentencing range; the need to avoid unwarranted sentence disparities; and the need to provide restitution to any victims.

“The district court may not presume that the Guidelines range is reasonable.”

*Carty*, 520 F.3d at 991, citing *Rita v. United States*, 551 U.S. 338, (2007), and *Gall v. United States*, 552 U.S. 38 (2007). “Nor should the Guidelines factor be given more or less weight than any other. While the Guidelines are to be respectfully considered, they are one factor among the § 3553(a) factors that are to be taken into account in arriving at an appropriate sentence.” *Id.*, *Carty*, citing *Kimbrough*, 552 U.S. 85 (2007), and *Gall*.

### **Sentencing Discussion**

Mr. Faulkner agrees with the Pretrial Sentencing Investigation Report (PSR) calculation of the applicable sentencing range for his charges and criminal history score per the 2018 United State Sentencing Guidelines (USSG). Mr. Faulkner does not dispute his offense level calculation is a total offense level of 11. He does not dispute his total criminal history score is zero with a criminal history category of I.

Mr. Faulkner enters a joint recommendation for a three-year term of probation, including a 6 month period of home detention and 40 hours of community service. Mr. Faulkner understands his advisory sentencing guideline range is between 6-12 months with a three level reduction for acceptance of responsibility per USSG § 3E1.1.

#### ***1. Supervision status***

Mr. Faulkner has been out of custody for the duration of his pending charges under supervision by Pretrial Services since July 2020. He has been in compliance with the terms of his supervision and has established a good relationship with his Pretrial Officer.

**2. *Family History, Background and 18 U.S.C. § 3553(a) Factors***

Mr. Faulkner's family history and other background information is provided separately in the Confidential Supplement under seal pursuant to Standing Order 2018-1.

DATED 2 June 2021.

**/s/Tara Herivel**

Tara Herivel, OSB No. 070418  
Of Attorneys for Christopher Arthur, Defendant

**CERTIFICATE OF SERVICE**

I, Tara Herivel, hereby certify that, on June 2, 2021 I made service of Defendant's  
SENTENCING MEMORANDUM, upon the following interested parties:

Ashley Cadotte, AUSA  
1000 SW Third Avenue, Suite 600  
Portland, OR 97204

Respectfully Submitted,

**/s/Tara Herivel**  
Tara Herivel, OSB No. 070418  
Attorney for Defendant